

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JERARDO RODRIGUEZ,

Plaintiff,

v.

SOHI HEMIT, SOON KIM, ALL
UNKNOWN INVESTIGATORS FOR THE
POST OFFICE, ALL UNKNOWN
INVESTIGATORS FOR THE
INSPECTOR GENERAL, ALL
UNKNOWN INVESTIGATORS FOR THE
CONSUMER AFFAIRS,

Defendants.

NO. C16-0778 RAJ

ORDER

I. INTRODUCTION

This matter comes before the Court upon Defendants' motion to dismiss (Dkt. # 26) and Plaintiff's motion for reconsideration, extension of time and to compel (Dkt. # 30).

II. BACKGROUND

This lawsuit arises from Plaintiff's encounters with his mail carrier. Plaintiff claims that he complained to the U.S. Post Office in July 2015 about the bad attitude of Sohi Hemit, Plaintiff's mail carrier. Dkt. 1-1 (Complaint) at 1. Plaintiff avers that Hemit began throwing trash in Plaintiff's mailbox in retaliation for this complaint. *Id.* Plaintiff alleges that he

1 appealed to Soon Kim, the Post Master General, as well as to Kim's superiors to no avail.
2 *Id.* at 2. Plaintiff claims that he experienced further retaliation for his insistence on an
3 investigation into the initial complaint. *Id.* For example, Plaintiff states that Hemit tampered
4 with his mail on one occasion and, on another occasion, stole \$60.00 by slicing open three
5 letters meant for Plaintiff. *Id.* Plaintiff claims that the harassment has not stopped. *Id.*

6 On May 25, 2016, Plaintiff filed suit against Hemit, Kim, and a slew of unknown
7 defendants. Dkt. # 1. In order to properly serve the unknown defendants, Plaintiff requested
8 permission to propound early discovery. Dkt. # 22. The Court granted his request, allowing
9 Plaintiff to propound discovery no later than January 31, 2017. Dkt. # 23. On January 17,
10 2017, Plaintiff filed a motion to compel, arguing that he propounded discovery but
11 Defendants refused to comply. Dkt. # 24. Instead, Defendants answered that Plaintiff's
12 motion for discovery was "improper and objectionable under" the Federal Rules of Civil
13 Procedure. Dkt. # 24 at 8. Defendants stated they had "no obligation to provide responses to
14 these discovery requests, and no further response, other than [this letter,] will be
15 forthcoming." *Id.* The Court struck part of Plaintiff's motion to compel for failure to
16 comply with LCR 37(a)(1) but reiterated that "Defendants shall respond to Plaintiff's
17 discovery no later than 30 days after receipt." Dkt. # 25.

18 The parties did not file additional briefs regarding discovery. On March 23, 2017, the
19 Court noted that the deadlines for early discovery had passed and therefore dismissed the
20 unknown defendants. Dkt. # 29.

21 Defendants now request that the Court dismiss the matter pursuant to Rule 4(m). Dkt.
22 # 26. Plaintiff moves to compel Defendants to respond to his discovery requests. Dkt. # 30.

23 **III. DISCUSSION**

24 **A. Service**

25 In a suit against a federal employee in her official capacity, Rule 4(i)(3) requires a
26 plaintiff to serve both the employee and the United States. Fed. R. Civ. P. 4(i)(3). Rule
27 4(i)(1) instructs plaintiffs on how to serve the United States.
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1 Plaintiff's *pro se* status does not excuse him from abiding by applicable rules and
2 deadlines. However, in the context of Rule 4—and specifically in the context of Rule 4(i)—
3 the Ninth Circuit has recognized “a liberal and flexible construction.” *Borzeka v. Heckler*,
4 739 F.2d 444, 447 (9th Cir. 1984). Moreover, Rule 4 provides some leeway to a plaintiff
5 who successfully serves the employee but not the United States. In such a case, the “court
6 must allow a party a reasonable time to cure its failure.” Fed. R. Civ. P. 4(i)(4)(B).

7 In this case, Plaintiff served the named defendants but failed to serve the United
8 States. In response, Plaintiff contends that the United States is on notice because the
9 Department of Justice responded to his application for default and has authored many of the
10 briefs in this matter. Dkt. ## 17, 26. In the alternative, Plaintiff requests assistance from the
11 Court in properly serving the United States. Dkt. # 28.

12 The Court will allow Plaintiff reasonable time to cure the issue with service in this
13 matter. *See* Fed. R. Civ. P. 4(i)(4)(B). The Court directs the Clerk to issue service upon the
14 United States. 28 U.S.C. § 1915(d). The Clerk is directed to send by first-class mail to the
15 United States attorney for the Western District of Washington the following documents: a
16 copy of Plaintiff's complaint and this Order, a Waiver of Service of Summons, and a return
17 envelope, postage prepaid, addressed to the Clerk's office. The Clerk is further directed to
18 send these same documents, by registered or certified mail, to the Attorney General of the
19 United States. Fed. R. Civ. P. 4(i)(B).

20 B. Early Discovery

21 On two occasions, the Court granted Plaintiff early discovery to ascertain the names
22 of the “unknown” defendants. Dkt. ## 23, 25. The Court dismissed the unknown defendants
23 after it appeared that Plaintiff did not timely amend his complaint. Dkt. # 29. However, it
24 appears that the Government did not comply with the discovery requests. Dkt. # 24.

25 The Court GRANTS Plaintiff's motion for reconsideration to the extent that he may
26 have an extension to serve the unknown defendants. The Court reiterates what it has already
27 ordered in the past: Plaintiff may propound limited and targeted early discovery upon
28 Defendants for the sole purpose of ascertaining the identities of the unknown defendants. To

1 be clear, the scope of discovery is limited to the type of request that appears in Question 3 of
2 Plaintiff's Motion to Compel. Dkt. # 24 at 3. Such discovery must be propounded no later
3 than August 11, 2017. Defendants shall respond to Plaintiff's discovery no later than thirty
4 (30) days after receipt of the same. If Defendants object to the discovery requests, they shall
5 provide Plaintiff with the reasons for the objections. Defendants are on notice that Plaintiff's
6 discovery is targeted at identifying certain unknown defendants and shall keep this purpose
7 in mind when submitting their response.

8 No later than ten (10) days after Plaintiff has received the discovery responses from
9 Defendants, Plaintiff shall file an Amended Complaint naming those defendants whose
10 identities were ascertained through early discovery. If no such Amended Complaint is filed
11 by September 22, 2017, the Court will dismiss these unknown defendants without further
12 notice to the parties.

13 IV. CONCLUSION

14 For the foregoing reasons, Defendants' motion to dismiss is **DENIED**. Dkt. # 26.
15 Plaintiff's motion is **GRANTED**. Dkt. # 30.

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17 Dated this 1st day of August, 2017.

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21 The Honorable Richard A. Jones
22 United States District Judge
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